

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of WICKLAND PIPELINES LLC (PLC27) for Authorization to Establish Market-Based Rates and Conditions of Service and for Approval of Exemptions under Sections 818 and to 851 or, alternatively, Authorization to Increase Membership Contributions and Debt Limits and to Encumber Utility Property.

Application 14-08-011
(Filed August 6, 2014)

**DECISION GRANTING APPLICATION FOR AUTHORIZATION TO
ESTABLISH MARKET-BASED RATES AND CONDITIONS OF
SERVICE AND FOR APPROVAL OF EXEMPTIONS RELATED TO
SECURED FINANCING TRANSACTIONS**

Summary

We grant the application of Wickland Pipelines LLC (Wickland) for authority to finance a new common carrier jet fuel pipeline to John Wayne Airport (SNA) in Orange County. We also approve Wickland's requests to establish market-based rates for the SNA Pipeline, to be exempt from prior approval requirements under Public Utilities Code § 818, § 851 and the Commission's New Financing Rule for the purpose of financing the development and operation of the proposed SNA Pipeline and for any refinancing that Wickland may undertake with respect to its jet fuel pipelines serving the Sacramento and San Jose Airports.

1. Background

Wickland Pipelines LLC (Wickland or Applicant) is a limited liability company with a principal place of business in Sacramento, California. It is a

public utility pipeline corporation that currently owns and operates common carrier jet fuel pipelines to fuel tank storage facilities owned and operated by a consortium of airline companies operating at Sacramento International Airport (SMF Pipeline) and Mineta San Jose International Airport (SJC Pipeline).

In Decision (D.) 02-11-023, we authorized Wickland to provide fuel pipeline service at market-based tariff rates established through arms-length negotiations with its customers and to obtain initial capitalization for the construction of the SMF Pipeline. In D.08-02-016, we approved Wickland's current debt and equity structure in connection with the SMF Pipeline. In D.10-07-011, we approved Wickland's request for authorization to finance construction of the SJC Pipeline utilizing market-based rates and conditions of service, and we granted exemptions pursuant to Sections 829 and 853.¹

Wickland intends to construct a third common carrier jet fuel pipeline at the John Wayne Airport in Orange County, California (SNA Pipeline). The SNA Pipeline will be approximately five miles in length and will connect an existing Kinder Morgan petroleum products pipeline to a new fuel storage facility to be constructed, owned and operated at the John Wayne Airport by Snafuel Incorporated, a California corporation owned by a group of airlines operating out of that airport. By this application, Wickland again seeks exemption from prior approval requirements under Sections 818, 851 and the Commission's Competitive Bidding Rule² for the purpose of financing the development and operation of the proposed SNA Pipeline. It also requests that the Commission

¹ All Section references are to the California Public Utilities Code.

² As discussed in Section 2.4 below, the Competitive Bidding Rule has been superseded. However, Wickland still qualifies for exemption under the New Financing Rule.

determine that the exemptions will apply to any refinancing that Wickland may undertake with respect to the SMF and SJC Pipelines. No protests have been received to the application.

2. Discussion

2.1 Request for Exemptions

Section 818³ requires prior Commission approval before a public utility can issue stocks or bonds or equivalent instruments, however, Section 829(c) creates an exception to the prior approval requirement if the Commission finds that “the application thereof to such public utility...is not necessary in the public interest.”

Section 851⁴ requires prior Commission approval before a public utility can sell or encumber its property, however, Section 853(b) authorizes the Commission to exempt any public utility from the requirements of § 851 if the Commission “finds that the application thereof with respect to the public utility...is not necessary in the public interest.”

We have granted exemptions from Sections 818 and 851 when we have concluded that the utility does not have captive customers to finance the project, and market competition will serve to constrain its capital costs.⁵

³ 818. No public utility may issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes or other evidences of indebtedness payable at periods of more than 12 months from the date thereof unless...it shall have first secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied....

⁴ 851. No public utility...shall lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its...property useful in the performance of its duties to the public...without first having either secured an order from the commission authorizing it to do so....

⁵ See D.09-10-035 at 57 granting the application of Gill Ranch Storage, LLC for a Certificate of Public Convenience and Necessity for Construction and Operation of Natural Gas Storage Facilities and Related Matter.

Wickland represents that, as was the case with the SMF and SJC Pipelines, the SNA Pipeline will not have captive customers to finance its development and Wickland will bear the entire financial risk. If the Commission approves its request to establish market-based rates for the SNA Pipeline, existing market competition will serve to restrain Wickland's capital costs. For these reasons, Wickland asserts that Commission supervision of financing arrangements for the pipeline is not necessary to protect prospective customers or the public interest at large.

In its application, Wickland cites D.10-10-001, in which we granted the application of Central Valley Gas Storage, LLC, stating that: "The Commission routinely grants exemptions from § 818, § 851 and the Competitive Bidding Rule for debt and equity issued by utilities that (1) possess no market power, and (2) bear all risks for their business activities."⁶

2.2. Public Interest Considerations

The SNA Pipeline is entering a market for fuel transportation that is presently served by tanker trucks delivering 100% of the fuel required by the operating airlines. Wickland argues that approval of financing of the SNA Pipeline will be in the public interest because it would afford airline shippers a rate-competitive alternative to the existing truck transportation option, which would improve the reliability and economics of their fuel supplies.

Wickland does not currently have market power in the jet fuel transportation market serving SNA, because it (1) is a newcomer to that market;

⁶ Application at 5 citing D.10-10-001 at 28 (citing D.10-04-007, D.10-02-021 and D.09-10-035). As discussed in Section 2.4 below, the Competitive Bidding Rule has been superseded, however, Wickland still qualifies for exemption.

(2) starts out with a customer base of zero; and (3) is not in a position to force any jet fuel transporter to exit the market. Any concerns regarding anticompetitive behavior, including predatory pricing, can best be addressed by the Commission's complaint or investigatory process rather than requiring cost justification tariffs.

In addition, several objectives within the public interest are set forth in Exhibit E⁷ to the application, which includes an initial study by Orange County, the lead agency under the California Environmental Quality Act (CEQA), Cal. Pub. Res. Code § 21000 et seq. The study recognizes several objectives for the SNA Pipeline which are also in the public interest. These include: a decrease in traffic congestion due to elimination of 44 fuel tanker truck trips per day; decreased air pollution; increased safety and decreased oil spill related damage and increased airport security.

2.3. Request for Exemption from General Order (GO) 96-B⁸

Wickland proposes to establish market-based rates for its transportation of jet fuel to shippers through arms-length negotiations and to offer the same negotiated rate to all shippers and publish and maintain on file with the Commission, its most current transportation rates. It reasons that negotiated, market-based rates are appropriate because airline companies utilizing the

⁷ On May 9, 2014, the Orange County Clerk filed with the State Clearinghouse, a notice of Determination (State Clearinghouse Number 2013121011) providing notice of the approval of a Mitigated Negative Declaration for Wickland jet Fuel Pipeline Project – CPP 2013-00087 by the Orange County Director of Planning. The Mitigated Negative Declaration, the underlying Initial Study and the associated County Planning Staff Report, dated May 8, 2014 are collectively Exhibit E.

⁸ The Application refers to GO 96-A, which is no longer available on the Commission's website, and was modified with adoption of GO 96-B in 2007.

pipeline will exert competitive pressure on Wickland by virtue of their sophistication in negotiating fuel transportation services and because they will always have the option to utilize truck tanker fuel servicing if they do not remain satisfied with the SNA Pipeline.

We grant Wickland's request for a waiver from the requirements of GO 96-B and authorize Wickland to charge market based rates without the need to file any cost justification. Wickland may instead publish its rates using a form of tariff schedule created by the Federal Energy Regulatory Commission (FERC) for use by interstate pipelines rather than the form required by our GO 96-B, Section 9.

2.4. Request for Exemption from Competitive Bidding Rule

Wickland also asks that we exempt it from the Competitive Bidding Rule adopted in Commission Resolution F-616 because that rule applies only to utilities with bond ratings of "A" or higher and to bond issuances of \$20 million or more. The Competitive Bidding Rule has been superseded.

D.12-06-015 established a New Financing Rule to reflect current market practices and standards, to provide utilities with flexibility to take advantage of market opportunities and adjust pricing in order to obtain low-cost debt financing and to reflect advances in information technology.⁹ The New Financing Rule includes an exemption for bond issues of \$42 million or less, adjusted each year for the Consumer Price Index found on the California Department of Finance website.

⁹ See D.12-06-015, Appendix A at A2.

Wickland represents that it does not have a bond rating and does not propose to issue bonds to finance construction of the SNA Pipeline. Wickland states that it will have incentive to seek the most favorable terms for its financing transactions because it bears all of its own business risk for financing transactions. Therefore, we find that Wickland qualifies for exemption under the New Financing Rule.

2.5. Conclusion

For the above reasons, we conclude that the public interest does not require application of §§ 818 and 851 to the SNA Pipeline project, and that the SNA Pipeline project is exempt under the New Financing Rule. We waive the requirements of GO 96-B and authorize Wickland to charge market based rates and to use the FERC tariff form.

3. Authorization to Apply Exemptions to Refinancing of SMF and SJC Pipeline Indebtedness

Wickland requests that the Commission determine that the exemptions described above will apply to any future refinancing that Wickland may undertake with respect to the SMF and SJC Pipelines.

In its application, Wickland sets forth its proposed manner of financing should the Commission require it to obtain prior authorization in lieu of granting the requested exemptions. Wickland proposes to use a combination of additional capital contributions and bank financing totaling approximately \$14.5 million to fund the construction and operation of the SNA Pipeline. Wickland proposes to increase the total amount of its capitalization and either obtain new financing for the SNA Pipeline or, if more favorable to do so, obtain new consolidated financing of approximately \$28.6 million for all three of the pipelines it operates. Wickland proposes to issue one or more promissory notes

to encumber each of its three pipelines in order to secure debt financing. Wickland represents that the notes will evidence commercially reasonable loans obtained under credit agreements with banks or insurance companies that qualify as a “finance lender” under California Financial Code Section 22009 and are qualified to transact business within the state of California.¹⁰ The specific amounts and particulars of Wickland’s proposed financing are set forth in Exhibits C and D to the application which Wickland has submitted to the Commission under seal.

In D.08-02-016, we granted Wickland’s request for authority to issue approximately \$2.619 million of debt and equity, finding that Wickland had demonstrated a reasonable need to issue the requested debt and equity for the purposes of (1) providing permanent financing for business start-up expenses and pipeline construction costs in excess of the \$7.381 million of debt and equity authorized by D.02-11-023, and (2) financing future repairs and upgrades to the SMF Pipeline.¹¹ We determined that those purposes were authorized by § 817 and, as required by § 818, were not reasonably chargeable to current operating expense or income.¹² In granting Wickland authority to issue the additional debt

¹⁰ Application at 6-7 Section IV. Authorizations In The Alternative to Increase Membership Contributions and Indebtedness.

¹¹ In that opinion, we clarified that the term “repairs” does not encompass routine maintenance expenditures charged to current operating expense or income.

¹² The use of debt and equity to fund the construction of utility infrastructure is authorized by § 817(b). The use of debt and equity to fund utility start-up expenses and capitalized repairs and upgrades of utility infrastructure is authorized by § 817(c).

and equity, we noted that Wickland had the financial capacity to pay for the cost of the requested debt and equity capital.¹³

We also found that Wickland's request for authority under § 851 to issue additional long-term secured notes was reasonable. We granted the request with the caveat that, if a default were to occur and title to any property, franchise, permit, or right that is necessary or useful in the performance of Wickland's duties to the public is transferred pursuant to the terms of the secured debt, the property transferred must not be removed from utility service without prior authorization from the Commission.

At that time, we placed restrictions upon Wickland. We required it to use the proceeds of its debt and equity issuance for two purposes specifically identified, and to demonstrate that the proceeds from such debt and equity were used only for the purposes authorized by that decision by requiring maintenance of records to identify the specific debt and equity issued pursuant to the decision.

Wickland has provided confidential Exhibits C and D outlining its proposed financing needs for the SNA Pipeline project. These exhibits demonstrate that Wickland has the financial capacity to pay for the cost of the requested debt and equity capital. There is no indication that Wickland has ever defaulted with respect to its obligations.

Accordingly, we approve Wickland's request that the exemptions granted in connection with the financing of the SNA Pipeline apply to any consolidated refinancing of SMF and SJC Pipelines that may be undertaken. In doing so, we

¹³ The financial statements appended to its application demonstrated that Wickland had been able to pay the interest expense on all of its outstanding debt and earn a reasonable return on all of its outstanding equity.

place the same restrictions upon the financing transaction as those established in D.08-02-016, and require Wickland to maintain records to (1) identify the specific debt and equity issued pursuant to today's decision, and (2) demonstrate that the proceeds from any debt and equity thus issued are used only for the purposes authorized here. The exemption is granted with the caveat that if a default should occur and title to any property, franchise, permit, or right that is necessary or useful in the performance of Wickland's duties to the public is in jeopardy of being transferred pursuant to the terms of the secured debt, the property transferred shall not be removed from utility service without prior authorization from the Commission.

D.08-02-016 placed an annual reporting requirement upon Wickland. In light of the flexibility that we are granting to Wickland here, it is appropriate and prudent to require Wickland to return to semiannual reporting required pursuant to GO 24-C, as discussed below, in order to ensure that the Commission is timely apprised of any financing undertaken pursuant to this decision.

4. Reporting under GO 24-C

GO 24-C requires utilities to submit a semiannual report that contains, among other things: (1) a description of the debt and equity issued by the utility during the prior period; (2) the total amount of debt and equity outstanding at the end of the prior period; (3) a report showing the purposes for which the utility expended the proceeds realized from sale of debt and equity during the prior period; (4) evidence that the utility maintains records and accounts consistent with appropriate use of the funds in compliance with Section 817; and (5) where the Commission directs that the proceeds be used for a specific purpose (e.g., a specific construction project), evidence that there is a separate

bank account, which preserves a strong audit trail that will permit the Commission to track the funds.

In D. 08-02-016, we authorized Wickland to report annually the information required by GO 24-C because Wickland is a financially healthy utility with market-based rates, and because the amount of debt and equity that Wickland was authorized to issue was not excessive relative to its income, cash flow and other financial metrics. As discussed in Section 3 above, we require Wickland to comply with semiannual reporting under GO 24-C, in order that we may confirm that, consistent with § 824, the proceeds from any debt and equity issued pursuant to today's decision are used only for the purposes authorized by this decision.

5. Rule 2.4. – Information Submitted in Compliance with CEQA

The Commission is required by CEQA to consider the environmental consequences of a project that is subject to the Commission's discretionary approval.¹⁴ In doing so, the Commission must act as either a Lead Agency or Responsible Agency. The Lead Agency is the one with the most responsibility for supervising or approving the project as a whole.

As the public agency with the greatest responsibility for supervising or approving the project as a whole, Orange County is the lead agency under CEQA § 21000 et seq.¹⁵ As a Responsible Agency, CEQA requires the Commission to review and consider the Lead Agency's environmental documents and findings before acting upon or approving a project. To comply with this requirement, the record in this proceeding includes the May 9, 2014 Notice of Determination filed

¹⁴ CA Pub. Res. Code § 21000, *et seq.*

¹⁵ CEQA Guidelines, 14 C.C.R. § 15051(b).

by the Orange County Clerk, providing notice of the County's approval of a Mitigated Negative Declaration for Wickland Jet Fuel Pipeline Project CPP2013-00087 by the Orange County Director of Planning.¹⁶

As recognized in the Initial Study, Wickland's objectives for the SNA Pipeline include decreasing traffic congestion; lowering jet fuel costs by delivering jet fuel more economically via pipeline; reducing air pollution and associated global warming; decreasing energy consumption; increasing safety on local streets and highways; decreasing the risk of oil spill and environmental damage and increasing airport security. The Initial Study concluded that shipping jet fuel via the SNA Pipeline would eliminate 44 tanker truck trips per day, which studies show result in many times more fatalities than pipeline transportation of fuel.¹⁷

We have reviewed and considered the environmental documents submitted with Wickland's application and find them adequate to approve the application.

Request to File Exhibits Under Seal

Pursuant to Rule 11.4 of the Commission's Rules, Wickland filed a motion for leave to file under seal, confidential Exhibits C¹⁸ and D¹⁹. Wickland represents that the exhibits contain sensitive, proprietary information and that the disclosure of information therein could place Wickland at an unfair business

¹⁶ See Exhibit E to the Application.

¹⁷ Application at 12.

¹⁸ Exhibit C - Project Construction Budget as of August 2014.

¹⁹ Exhibit D - Financing Parameters.

disadvantage. We have granted similar requests in the past regarding financial and proprietary information.

We grant Wickland's request for confidential treatment of confidential Exhibits C and D for a period of two years from the effective date of this decision. During that period the information must not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

If Wickland believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion must be filed no later than one month before the expiration date.

6. Categorization and Need for Hearing

In Resolution ALJ 176-3341, dated August 28, 2014, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is appropriate to change the preliminary determination to reflect that hearings are not necessary.

7. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14(c)(2) of the Commission's Rules of Practice and Procedure (Rules), the otherwise applicable 30-day period for public review and comment is waived.

8. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

Findings of Fact

1. Wickland's owners will bear the entire economic risk of constructing the SNA Pipeline.
2. Wickland will not have captive customers to finance construction of the SNA Pipeline.
3. The market for jet fuel transportation to the John Wayne Airport in Orange County is competitive.
4. Construction of the SNA Pipeline will eliminate the need for 44 tanker truck trips a day to the John Wayne Airport.
5. Construction of the SNA Pipeline will reduce traffic congestion and increase safety on local streets and highways.
6. Construction of the SNA Pipeline will reduce the risk of spills and environmental damage.

Conclusions of Law

1. The Initial Study and Mitigated Negative Declaration for the SNA Pipeline filed by the Orange County Clerk should be adopted.
2. Wickland does not currently have market power in the jet fuel transportation market serving SNA.
3. The public interest does not require application of §§ 818 and 851 to initial financing of the SNA Pipeline project or to the refinancing of the SMF and SJC Pipelines. The financing transactions for the SNA Pipeline project described in the application or the refinancing of the SMF and SJC Pipelines should be exempt from the prior approval requirements of Pub. Util. Code §§ 818 and 851.

4. The requirements of GO 96-B should be waived and Wickland should be authorized to charge market based rates without the need not file any cost justification, and authorized to use the FERC tariff form.

5. Wickland should be authorized to set market-based rates and terms of service on a non-discriminatory basis to all shippers on the SNA Pipeline.

6. The SNA Pipeline project is exempt under the New Financing Rule adopted in D.12-06-015.

7. The exemptions applicable to the SNA Pipeline should be applied to any refinancing of the SMF and SJC Pipeline projects which are undertaken to consolidate financing on SNA, SJC and SMF Pipelines on more favorable terms.

8. Wickland's motion to file under seal Exhibits C and D should be granted for a period of two years after the date of this decision.

9. Evidentiary hearings are not necessary.

10. The application should be approved.

O R D E R

IT IS ORDERED that:

1. Wickland Pipelines LLC is authorized to construct the John Wayne Airport Pipeline on the financial terms and conditions set forth in the application without further Commission approval.

2. Wickland Pipelines LLC is authorized to refinance existing debt pertaining to its jet fuel pipelines serving the Sacramento International Airport and Mineta San Jose International Airport Pipelines without further Commission approval. The exemptions granted in Ordering Paragraphs 1 and 2 are subject to the conditions in Ordering Paragraphs 3 through No. 6.

3. If a default occurs and title, control or ownership of any Wickland Pipelines LLC property, franchise, permit, or right that is necessary or useful in the performance of Wickland's duties to the public is transferred pursuant to the terms of the secured debt, the property transferred shall continue to be used to provide public utility service until the Commission authorizes otherwise.

4. Wickland Pipelines LLC shall maintain records to identify the specific debt and equity issued pursuant to this decision.

5. Wickland Pipelines LLC shall demonstrate that the proceeds from such debt and equity have been used only for the purposes authorized by this decision.

6. Wickland Pipelines LLC must comply with requirement of General Order 24-C to report on a semiannual basis the debt and equity issued pursuant to this decision. Reports submitted pursuant to this Ordering Paragraph shall demonstrate that the proceeds from any debt and equity issued pursuant to this order have been used only for the purposes authorized by this decision.

7. The Notice of Determination (State Clearinghouse Number 2013121011) and related study, findings and report (collectively Exhibit E to the application) filed by the Orange County Director of Planning are adopted for purposes of this decision and incorporated by reference into this decision.

8. Wickland Pipelines LLC shall comply with all applicable environmental laws and regulations when planning and implementing any future repairs or upgrades to the John Wayne Airport, Sacramento International Airport and Mineta San Jose International Airport Pipelines that are financed or refinanced, in whole or in part, with proceeds from the financing transactions authorized by this decision. If no other agency is responsible for environmental review under

the California Environmental Quality Act (CEQA) of future pipeline repairs or upgrades that are not exempt from CEQA, Wickland Pipelines LLC shall file an application at the Commission to obtain CEQA review.

9. Wickland Pipelines LLC is authorized to charge market based rates without the need not file any cost justification.

10. Wickland Pipelines LLC may publish its tariff rates for the John Wayne Airport Pipeline in a Federal Energy Regulatory Commission form tariff.

11. Financing transactions for the John Wayne Airport Pipeline is exempt under the New Financing Rule adopted in Decision 12-06-015.

12. Refinancing of the Sacramento International Airport Pipeline or Mineta San Jose International Airport Pipeline for the purpose of consolidating financing with John Wayne Airport Pipeline shall be exempt from prior approval by the Commission.

13. Wickland Pipelines LLC's motion to seal Exhibits C and D is granted. The information shall remain sealed and confidential for a period of two years after the date of this decision. During this two-year period, this information will remain under seal and confidential, and shall not be made accessible or disclosed to anyone other than the Commission staff or on further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Law and Motion ALJ, the Chief ALJ, or the Assistant Chief ALJ, or as ordered by a court of competent jurisdiction. If Wickland Pipelines LLC believes that it is necessary for this information to remain under seal for longer than two years, Wickland Pipelines LLC may file a new motion stating the justification of further withholding of the information from public inspection. This motion shall be filed at least 30 days before the expiration of this limited protective order.

14. The preliminary determination on the need for hearing is changed from yes to no.

15. Application 14-08-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.